Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of The Telecommunications Act of 1996 Polices and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 94-129

COMMENTS OF TELEPHONE COMPANY OF CENTRAL FLORIDA, INC.
IN SUPPORT OF
VOICELOG'S PETITIONS FOR PARTIAL STAY AND FOR RECONSIDERATION

Telephone Company of Central Florida, Inc. [TCCF], submits these comments in support of the petitions for partial stay and reconsideration of the Commission's *Third Report and Order*[1] filed by VoiceLog LCC ("VoiceLog") on March 28, 2001 in this proceeding. VoiceLog has requested that the Commission reconsider its decision to require a carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system to drop off the call once the three-way connection has been established (the "drop off rule").[2] VoiceLog has also asked the Commission to stay the application of the drop off rule to the extent that the rule would prohibit a carrier or a carrier's sales representative from remaining silently on the line during a third-party verification ("TPV") call, to assist the subscriber in

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[1] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, FCC 00-255 at ¶ 38 (rel. Aug. 15, 2000) ("*Third Report and Order*").

[2] The drop off rule provides that "[a] carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established." 47 C.F.R. § 64.1120(3)(ii).

reaching a live person or terminate the call connection. Because imposition of the drop off rule would irreparably harm the Telephone Company of Central Florida, Inc., and was adopted without consideration of its effects on small carriers, the Telephone Company of Central Florida, Inc., urges the Commission to expeditiously grant VoiceLog's petitions for partial stay and reconsideration.

BACKGROUND

The Telephone Company of Central Florida, Inc., is an independent, small business concern that provides competitive local exchanges services in Alabama, Florida, Georgia, and North Carolina and competitive interexchange carrier services nationwide. TCCF has 40 employees and is not dominant in its field of operation; therefore, it meets the definition of a small business under the Regulatory Flexibility Act ("RFA").[3] In addition, TCCF is directly regulated by the Commission, and is directly affected by the rule changes adopted by the Commission in the *Third Report and Order*.

DISCUSSION

I. THE DROP OFF RULE SHOULD BE STAYED BECAUSE IT WILL CAUSE IRREPARABLE HARM TO SMALL CARRIERS, HARM THAT WOULD BE AVOIDED BY ADOPTION OF VOICELOG'S STAY REQUEST.

TCCF is committed to accurately verifying its change orders, and has a strong commitment to preventing slamming. Automated TPV is an effective and affordable way to verify sales transactions to ensure customers in fact want to change carriers. VoiceLog, for example, charges 50 to 75 percent less than live-operator TPV companies while providing quality verifications that effectively prevent slamming and, consequently, a carrier's liability for

[3] *See* 5 U.S.C. § 601(3).

unauthorized charges. TCCF would thus incur substantial additional expense in marketing its services if it were unable to use automated TPV services.

If the drop off rule is not stayed, TCCF may not be able to use three-way verification calls at all. TCCF does not have the technical ability for its sales representative to initiate a three-way conference call and then drop off the line. Therefore, dropping off the line would require putting the line on hold until the call is completed. But, since the sales representative would have no way of knowing when the TPV is complete, the sales representative would have to periodically recheck the line to see if the subscriber is finished. This is an extremely inefficient use of a sales agent's time, and may even be a technical violation of the drop off rule. Accordingly, the drop off rule will force TCCF to upgrade its equipment and software at a significant expense if it is to continue to efficiently use three-way conference calls for automated TPV. Because a silent agent cannot unduly influence a customer, this expense is not necessary to accomplish the Commission's goal of avoiding improper coercion during the verification process.

If the drop off rule is not stayed, TCCF will be harmed unnecessarily because even a sales agent that is silent, or that speaks only to assist the subscriber in reaching a live person or terminating the call connection, can be critical to ensuring that consumer intent regarding their choice of carrier is realized. Automated verification uses recorded questions with touch pad prompts. An agent on the line can determine whether a customer is having difficulty using the automated process and might be better served using the optional live operator. The agent could provide assistance to that person in reaching the live operator. In our experience, if a customer becomes frustrated and cannot easily remember to try the live operator, the customer is likely simply to hang-up – frustrating consumer choice and unnecessarily resulting in a loss of sales for our company.

Similarly, customers sometimes have questions that occur to them during the verification process. If the agent is on the line, he or she can then terminate the TPV session, respond to the customer's inquiries, and reinitiate the TPV. However, under the drop off rule, there is no practical way for the customer to get answers to his or her questions. Even if the consumer can be reconnected to the agent's call center, it is very unlikely that the consumer will be connected to the sales agent the consumer had worked with, and who is in the best position to provide the assistance that consumer needs. This also frustrates consumer choice and results in unnecessary lost sales.

Because it will increase the cost of verification and may result in lost sales, TCCF will suffer irreparable harm if the drop off rule is not partially stayed. However, granting the stay—which is limited to allowing a sales agent to remain silently on the line, assist the subscriber in reaching a live person, or terminate the call connection—will avoid causing irreparable harm to TCCF and other small carriers, while ensuring that consumers are not unduly influenced during the TPV process. It is therefore in the public interest to grant the stay.

II. A STAY AND RECONSIDERATION OF THE DROP OFF RULE IS REQUIRED BECAUSE THE COMMISSION FAILED TO COMPLY WITH THE REQUIREMENTS OF THE FEDERAL REGULATORY FLEXIBILITY ACT.

The partial stay must also be granted in order to avoid imposing unnecessary regulatory burdens on small carriers before the Commission has complied fully and completely with the Regulatory Flexibility Act. The RFA requires an agency to publish an initial regulatory flexibility analysis ("IRFA") for any rule proposed in a general notice of proposed rulemaking.[4]

[4] *See* 5 U.S.C. ¶ 603(a).

The IRFA must include, among other things, a description of any significant alternatives to the proposed rule which would accomplish the stated objectives and which minimize any significant economic impact of the proposed rule on small businesses.[5] In the *Further Notice of Proposed Rulemaking* in this proceeding, the Commission sought comment on allowing a telemarketer to initiate three-way calls for TPV, but did not specifically propose a drop off requirement.[6] The relevant portion of the IRFA states only that "the Commission seeks comment on the definition of an independent third party verifier and on the content of the independent third party verification," which did not give any hint of a drop off requirement.[7] It was thus impossible for interested parties to comment on a drop off requirement in response to the Commission's IRFA.

Nevertheless, several commenters in this proceeding argued generally against adoption of a drop off requirement.[8] RCN Telecom Services, Inc. stated that sales agents should be permitted to remain on the line to "answer any questions the subscriber may have about the verification process itself, his or her change of service, or any other service or technical matter."[9] CoreComm noted that such participation would benefit the consumer and that a drop off rule would cause unnecessary delays in the verification process.[10] Sprint asserted that, as an alternative to drop off, the sales agent could remain silent during the call.[11] VoiceLog also argued against a drop off requirement, arguing that "[a]s a silent presence, the sales

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5 5 U.S.C. ¶ 603(c).

6 *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 1508 ¶ 166 (1998) ("*Further NPRM*").

7 *Id.* at ¶ 229.

8 *See, e.g.*, Reply Comments of VoiceLog LLC (filed May 3, 1999); Comments of RCN Telecom Services, Inc.; Comments of Cable & Wireless, Comments of CoreComm Ltd.

9 RCN Comments at 5.

10 CoreComm Comments at 6.

11 Sprint Comments at 8.

representative has no opportunity to influence the outcome of the TPV session."[12] And as RCN pointed out, "unnecessarily rigorous or burdensome" TPV requirements "will only increase the costs a carrier must incur to attract and obtain new customers and thus, may decrease the benefits passed on to consumers."[13] These commenters presented the Commission with a significant alternative to the drop off rule that would protect consumers from undue influence without imposing unnecessary burdens on small businesses.

Nevertheless, the Commission failed to discuss any alternatives to the drop off rule or to examine the impact of the rule on small carriers, even though the rule, on its face, clearly applies to them.[14] The RFA requires that final agency rules contain a final regulatory flexibility analysis ("FRFA") describing the steps the agency has taken to minimize the significant economic impact on small entities consistent with the agency's stated objectives, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[15] Therefore, the failure to conduct any analysis of significant alternatives in the RFRA means the Commission must consider them now, and grant the stay in order to prevent harm to small carriers while the Commission undertakes the review that the RFA requires.

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12 VoiceLog Reply Comments at 2.

13 RCN Comments at 6, n.2.

14 *See Third Report and Order* at ¶¶ 38, 112.

15 5 U.S.C. § 604(a)(5).

CONCLUSION

For all the foregoing reasons, the Telephone Company of Central Florida, Inc. asks that the Commission grant VoiceLog's petitions for partial stay and reconsideration of the *Third Report and Order* and adopt VoiceLog's proposed modification to the drop off rule.

Respectfully submitted,

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